

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**EXPEDITED JOINT MOTION OF DEBTORS AND PROGRESSIVE MEDICAL
MANAGEMENT OF BATESVILLE, LLC FOR ENTRY OF AN ORDER
(I) APPROVING THE FIRST AMENDMENT TO THE PANOLA APA,
(II) AUTHORIZING PAYMENT OF THE PURCHASE PRICE OF THE SALE OF
PANOLA MEDICAL CENTER TO SERVISFIRST BANK, (III) AUTHORIZING
CERTAIN RELEASES, AND (IV) GRANTING RELATED RELIEF**

By this motion (the “**Motion**”), the above-captioned debtors and debtors in possession (the “**Debtors**”) and Progressive Medical Management of Batesville, LLC (“**PMM**”, together with Debtors, the “**Movants**”) seek entry of an order in substantially the form filed contemporaneously herewith (the “**Proposed Order**”), pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 9075-1 of the Local Rules of the Bankruptcy Court for the Middle District of Tennessee (the “**Local Rules**”) authorizing the Debtors (i) to enter into that certain First Amendment to the Panola APA (the “**First Amendment**”), attached hereto as Exhibit A; (ii) to pay ServisFirst Bank (“**ServisFirst**”) the Purchase Price (as defined in the Panola APA) from the sale of Panola Medical Center (defined below) within three (3) business days of the Closing Date (defined below), and (iii) to enter into

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

mutual releases with Purchaser (defined below) and Guaranty Bank (defined below). In support of this Motion, Movants respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Middle District of Tennessee (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

GENERAL BACKGROUND

4. On August 24, 2018 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court commencing the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). The general factual background regarding the Debtors, including their business operations, debt structure, and the events leading to the filing of the Chapter 11 Cases is set forth in detail in the *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”) [Docket No. 49] and fully incorporated herein by reference.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

6. On August 29, 2018, the Court entered an order authorizing the joint administration of the Chapter 11 Cases [Docket No. 59].

1. On January 22, 2019, the Court entered an order (the “**Sale Order**”) [Docket No. 694] authorizing the sale (the “**Sale**”) of Panola Medical Center and Panola Medical Center West (collectively, “**Panola Medical Center**”) to PMM and Panola Physicians Group, LLC (“**PPG**,” and together with PMM, the “**Purchaser**”) pursuant to the terms of the Asset Purchase Agreement filed at docket number 662 (as amended, restated, or otherwise modified, the “**Panola APA**”).

2. The closing (the “**Closing**”) of the Sale was scheduled to occur effective as of 12:01 a.m. (prevailing Eastern Time) on March 1, 2019 (the “**Expected Closing Date**”).

3. All conditions to Closing under the APA were satisfied as of March 1, 2019 at 12:01 a.m. (prevailing Eastern Time) (the “**Effective Time**”) on the Expected Closing Date.

4. The Debtors were ready, willing, and able to proceed with Closing as of the Effective Time on the Expected Closing Date.

5. At or about 3:37 p.m. (Central Time) on February 28, 2019, the day before the Expected Closing Date, the Purchaser notified the Debtors’ bankruptcy counsel that the Purchaser was unable to obtain financing for the Sale and could not go forward with the Closing on March 1, 2019.

6. Following the Purchaser’s notification that it could not go forward with the Closing, the Debtors, on February 28, 2019, filed an emergency motion requesting an emergency status conference, which was held on March 1, 2019 at 11:00 a.m. (prevailing Central Time). A second status conference was held on March 4, 2019 at 1:00 p.m. (prevailing Central Time).

7. On March 7, 2019, the Court entered the *Agreed Order Regarding Emergency Hearing on the Status of Sale of Panola Medical Center and Panola Medical Center West* [Docket No. 845] (the “**Emergency Panola Order**”), which is fully incorporated herein by

reference. Pursuant to the Emergency Panola Order, an emergency hearing regarding the Panola Medical Center is set for March 12, 2019 at 1:00 p.m. (the “**Emergency Hearing**”).

8. On March 8, Debtors filed their *Expedited Motion of Debtors for Entry of an Order (I) Authorizing Debtors to Pay the DIP Obligations, (II) Authorizing the Use of Cash Collateral, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 847] (the “**Emergency Cash Collateral Motion**”), pursuant to which, Debtors request authority to, *inter alia*, pay the DIP Obligations (as defined in the Emergency Cash Collateral Motion) and use cash collateral of ServisFirst.

9. As of the filing of this Motion, Debtors and PMM have agreed to certain changes to the Panola APA, including (i) agreeing to seller financing of the Purchase Price in an amount equal to approximately [\$558,000.00], and (ii) amending the scheduled closing date to March 13, 2019 (the “**Closing Date**”). The Closing shall be effective as of the Effective Time.

10. Guaranty Bank & Trust Company (“**Guaranty Bank**”) has agreed to, *inter alia*, (i) make a term loan to Purchaser in the amount of \$[3,050,000] to purchase Panola Medical Center, and (ii) provide Purchaser a \$5,000,000 revolving line of credit to operate Panola Medical Center (collectively, the “**Guaranty Bank Financing**”). The Guaranty Bank Financing will allow Purchaser to go forward with the Closing.

11. In connection with the negotiations of the Guaranty Bank Financing and the First Amendment, Service First has agreed to loan Purchaser \$1,250,000.00, which—combined with the Guaranty Bank Financing—will allow Purchaser to go forward with the Closing.

RELIEF REQUESTED

12. By this Motion, the Debtors seek (I) to enter into the First Amendment, (II) to pay ServisFirst the Purchase Price within three (3) business days of the Closing Date, (III) to enter

into mutual releases with Purchaser and Guaranty Bank, and (IV) related relief.

BASIS FOR RELIEF

I. Entering into the First Amendment, Paying the Purchase Price to ServisFirst, and Entering into Certain Mutual Releases Are Sound Exercises of the Debtors' Business Judgment and in the Best Interests of the Debtors' Estates

13. The decisions to enter into the First Amendment, pay the Purchase Price to ServisFirst, and enter into certain mutual releases are in the best interests of the Debtors' estates and within the Debtors' business judgment because doing so will allow the Closing to occur. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate" 11 U.S.C. § 363(b).

14. In reviewing a debtor's decision to use estate property pursuant to section 363 of the Bankruptcy Code, courts have routinely held that if such use represents reasonable business judgment on the part of the debtor, such use should be approved. *See In re Lionel Corp.*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring a "good business reason" to approve a transaction under section 363). "Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection." *In re Lahijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005).

15. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied "as long as the proposed transaction appears to enhance the debtor's estate." *In re Food Barn Stores, Inc.*, 107 F.3d 558, 566 n.16 (8th Cir. 1997); *accord In re AbitibiBowater*, 418 B.R. 815, 831 (Banks. D. Del. 2009) (the business judgment standard is "not a difficult standard to satisfy"). Under the business judgment rule, "management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with

their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. B.A.P. 1992)).

16. Here, the Debtors have determined in their business judgment that it is prudent to enter into the First Amendment with Purchaser. Closing the Sale is critical to the success and administration of the Debtors' Chapter 11 Cases and is in the best interests of all parties in interest. Debtors have further determined in their business judgment that it is prudent to enter into mutual releases with Purchaser. Debtors' estates incurred certain expenses in connection with the operations of Panola Medical Center due to Purchaser's failure to go forward with the Closing on the Expected Closing Date. Because the Effective Time of the Closing will be March 1, 2019, Purchaser will be responsible for all operating expenses that resulted from Purchaser's failure to go forward with the Closing on the Expected Closing Date. The Debtors submit that the terms of the First Amendment and the mutual releases among Debtors and Purchaser are reasonable and within the sound business judgment of the Debtors.

17. Debtors have determined in their business judgment that it is prudent to pay the Purchase Price to ServisFirst. Pursuant to the Emergency Cash Collateral Motion, Debtors have requested authority to pay the DIP Obligations. Once the DIP Obligations have been satisfied, ServisFirst will have first-priority interests in and liens on the proceeds of the Sale. Moreover, ServisFirst has been instrumental in negotiating a resolution that will allow Purchaser to go

forward with the Closing and keep Panola Medical Center open and operating for the benefit of all parties. The Debtors submit that paying the Purchase Price to ServisFirst is within the sound business judgment of the Debtors and is in the best interests of the Debtors' estates.

18. Debtors have determined in their business judgment that it is prudent to enter into mutual releases with Guaranty Bank. The Guaranty Bank Financing is essential to Purchaser's ability to go forward with the Closing and keep Panola Medical Center open and operating for the benefit of all parties. Debtors submit that entering into mutual releases with Guaranty Bank is within the sound business judgment of the Debtors and is in the best interests of the Debtors' estates.

19. Debtors, PMM, and ServisFirst provided further evidence in support of this Motion on the record at the Emergency Hearing.

NOTICE

20. Concurrently with the filing of this Motion, the Debtors shall provide notice of this Motion to: (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) Centers for Medicare and Medicaid Services; (c) State of Tennessee Department of Health Division of Licensure and Regulation Office of Health Care Facilities; (d) Mississippi State Department of Health; (e) counsel to the official committee of unsecured creditors established in these cases pursuant to Section 1102 of the Bankruptcy Code; (f) ServisFirst Bank and its counsel; (g) Midcap Financial Trust and its counsel; (h) CHS/Community Health Systems, Inc. and its counsel (i) all Tennessee local counsel having entered a notice of appearance in these cases; (j) the Internal Revenue Service; (k) the Tennessee Attorney General's Office; (l) the Mississippi Attorney General's Office; (m) the Tennessee Secretary of State; (n) the patient care ombudsman and her counsel; (o) Guaranty Bank and its counsel; and (p) any party that has

requested notice pursuant to Bankruptcy Rule 2002. Service is being executed via the Court's CM/ECF system, email, hand delivery, and/or overnight mail.

WHEREFORE, the Debtors respectfully request that the Court grant the relief sought herein and such other and further relief as the Court may deem proper.

Dated: March 13, 2019
Nashville, Tennessee

POLSINELLI PC

/s/ Michael Malone

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-and-

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EXHIBIT A

The First Amendment to Panola APA

67754153.4

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This **FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT**, dated as of March ____, 2019 (this "Amendment"), is an amendment to that certain Asset Purchase Agreement, dated as of January 10, 2019 (the "Agreement"), and is by and between **BATESVILLE REGIONAL MEDICAL CENTER, INC.**, a Tennessee non-profit corporation (with BRP, "Seller"), **BATESVILLE REGIONAL PHYSICIANS, LLC**, a Tennessee limited liability company ("BRP"), Curae Health, Inc., a Tennessee non-profit corporation ("Curae"), **PROGRESSIVE MEDICAL MANAGEMENT OF BATESVILLE LLC**, a Mississippi limited liability company ("PMM"), and **PANOLA PHYSICIANS GROUP, LLC**, a Mississippi limited liability company ("PPG" collectively with PMM, "Purchaser").

WITNESSETH:

WHEREAS, the parties hereto have entered into the Agreement, pursuant to which, among other things, Purchaser has agreed to purchase from Seller, and Seller has agreed to sell to Purchaser, the Assets (as such term is defined in the Agreement); and

WHEREAS, Purchaser failed to pay the Purchase Price (as such term is defined in the Agreement) pursuant to Section 2.11 of the Agreement on March 1, 2019; and

WHEREAS, the parties now desire to proceed with the Closing of the purchase and sale of the Assets related to Panola Medical Center located in Batesville, Mississippi, and payment of the Purchase Price, and the parties have agreed to amend certain provisions of the Agreement in connection therewith.

Capitalized terms not defined in this Amendment shall have the meanings assigned in the Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy all of which are forever acknowledged and confessed, the parties hereby agree as follows:

Section 1. Amendments.

(a) The parties hereto agree that the Closing of the transaction set forth in the Agreement shall take place on March 13, 2019, by electronic mail, facsimile transmission, United States mail or overnight courier, or such other manner as may be agreed to by the parties. The Closing shall be effective as of 12:00:01 a.m., local time, on March 1, 2019.

(b) The following subsection (c) shall be added to Section 2.11 of the Agreement as follows:

“(c) Notwithstanding anything contained herein to the contrary, the Cash Purchase Price as set forth in Section 2.11(a)(ii) above shall be paid at Closing as follows: (i) \$2,292,000.00 shall be paid by wire transfer of immediately available funds to an account designated by Seller, and (ii) the balance of the Cash Purchase Price in the approximate amount of \$208,000.00 shall be paid pursuant to a Promissory Note from Purchaser to Seller with a term of one hundred eighty (180) days and an interest rate of 7.0% (the “First Promissory Note”).

(c) The following subsection (d) shall be added to Section 2.11 of the Agreement as follows:

“(d) Notwithstanding anything contained herein to the contrary, the Inventory and Prepaid Expenses required to be paid under Section 2.19 as set forth in Section 2.11(a)(vi) above shall be paid at Closing as follows: (i) \$500,000.00 shall be paid by wire transfer of immediately available funds to an account designated by Seller, and (ii) the balance of the Inventory and

Prepaid Expenses owed in the approximate amount of \$350,000.00 shall be paid pursuant to a Promissory Note from Purchaser to Seller with a term of one (1) year and no interest due thereon (the "Second Promissory Note" and collectively with the First Promissory Note, the "Promissory Notes"). The Promissory Notes shall be personally guaranteed by those individuals or entities that Seller, in its sole discretion, shall require from the class of individuals or entities who are the equity owners of Purchaser or its member entities."

(d) Section 2.19 of the Agreement is hereby amended and restated as follows:

"2.19 **Inventory and Prepaid Expenses.** Seller has prepared and delivered to Purchaser a balance sheet for the Hospital as of February 28, 2019, which includes an amount for inventory and prepaid expenses (the "Inventory and Prepaid Expenses"). Purchaser shall pay for the Inventory and Prepaid Expenses in the manner set forth in this Agreement."

(e) The following Section 2.21 shall be added immediately following Section 2.20 of the Agreement as follows:

"2.21 **Payroll.** Should the effective date of the Closing take place in the middle of a payroll pay period, Purchaser agrees to process and pay all accrued payroll obligations to all Hospital employees at the end of said pay period. At Closing, Purchaser shall receive a credit from Seller for any payroll obligations accrued prior to the Effective Time. By way of example, if the Closing of this transaction is effective as of 12:00:01 a.m. on March 1, 2019 and the payroll pay period for Hospital employees runs from February 23, 2019 to March 8, 2019, then Purchaser shall pay the Hospital employees on March 8, 2019 for the entire pay period and Purchaser will receive a credit on the closing statement for the accrued payroll from February 23, 2019 until February 28, 2019."

Section 2. Amendment; No Further Modification. The parties agree that this Amendment is an effective and binding amendment of the Agreement pursuant to the Agreement. Except as otherwise expressly stated in this Amendment, all of the terms and provisions of the Agreement shall remain in full force and effect, without amendment or modification.

Section 3. Divisions and Headings. The division of this Amendment into sections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Amendment.

Section 4. Counterparts. This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their authorized officers as of the date and year first above written.

SELLER:

Batesville Regional Medical Center, Inc.

By: _____
Print Name: Stephen N. Clapp
Title: President

Batesville Regional Physicians, LLC

By: _____
Print Name: Stephen N. Clapp
Title: President

CURAE:

Curae Health, Inc.

By: _____
Print Name: Stephen N. Clapp
Title: President

[Signature Page Continued on Next Page]

[Cont'd – Signature Page to First Amendment to Asset Purchase Agreement]

PURCHASER:

Progressive Medical Management of Batesville
LLC

By: _____
Print Name: _____
Title: _____

Panola Physicians Group, LLC

By: _____
Print Name: _____
Title: _____